IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 50 of 1990
With
FIRST APPEAL No. 51 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
PANDA SOMA MATHA & 3 - Defendant(s)

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Appearance :
MS HANSA PUNANI, AGP for Appellant(s) : 1,
MR DF AMIN for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/09/2006

ORAL COMMON JUDGMENT :

Since both these appeals are filed by the Government against the common judgment and award made by the Ld. Joint District Judge,

Panchmahals at Godhra in Land Reference Nos. 173 of 1985 and 174 of 1985 dated 1st March, 1989, the same are heard together and now they are being disposed of by this common judgment.

2. Respondents of both these appeals are original claimants before the Reference Court. Their lands were acquired under the provisions of the Land Acquisition Act [hereinafter referred to as 'the Act'] for executing irrigation project known as Panam Project. Notification under section 4 of the Act was issued on 12/11/1975 and published on 11/1/1976 and the notification under section 6 of the Act was made on 22/6/1976 and it was published on 5/7/1976 in the Official Gazette. The lands in question were situated at village Metral, Taluka Godhra, District Panchmahals. The area of the lands acquired is as under :-

L.A.R.	Survey No.	Total land H.A.G.	Jirayat land H.A.G.	Kyari land H.A.G.	Waste land H.A.G.
173/85	147	2-98-96	1-35-41	1-59-50	0-04
	122/2	0-54-64	0-30-64	0-19-23	0-05
	123	1-62-89	0-43-66	1-16-19	0-03
	124	0-54-12	Nil	0-53-11	0-01
174/85	122/1	3-26-79	3-26-79	Nil	Nil
	125/2	0-96-11	0-40-47	0-35-64	Nil
	149	2-75-19	1-08-11	0-87-01	0-06.

It appears from the record that the lands situated in this area were divided into

three categories, namely (1) Jirayat, (2) Kyari and (3) Waste land. Upon completion of the necessary formalities, the Special Land Acquisition Officer, Panam Project, declared award on 31/3/1977 and determined compensation as under :-

So far Land Reference Case No. 173/85 is concerned, for survey no. 147 he gave amount of Rs.4972-24 ps., for survey no. 122/2 Rs.853-02, for survey no. 123 Rs.3026-80 and for survey no. 124 Rs.1169-43 and so far Land Reference Case No. 174/85 is concerned, for survey no. 122/1 he awarded Rs.5736-85 ps., for survey no. 125/2 Rs.1714-76 ps., and for survey no. 149 Rs.4205-79 ps.

2.1. It appears that the intimation with regard to the declaration of award by the Special Land Acquisition Officer was not made in any manner to the respondents and, therefore, the respondents, though aggrieved by the inadequacy of the rate of compensation determined by the Special Land Acquisition Officer, they could not approach the District Court by way of reference under section 18 of the Act within the stipulated time. In view of the same, in the present proceedings contention was raised by the Government i.e., present appellant with regard to the reference being barred by period of limitation. The said issue has adequately been dealt with by the Ld. Joint District Judge, to which I will deal with during the course of the judgment. But suffice it to say that the said contention has been rejected by the Ld. Judge. In the reference, oral as well as documentary evidence was led by the respondents; whereas the Government did not lead any evidence and except filing written statement contesting the references, it did not put any material on record to substantiate its case. The Reference Court, at the end of the proceedings, partly allowed the reference cases and enhanced the compensation awarded by the Special Land Acquisition Officer. The Ld. Judge determined the rate of compensation at Rs.0=75 paise per sq. mtr for Jirayat land and Rs.1=12 paise

per sq. mtr for Kyari land. This was including the amount already awarded by the Special Land Acquisition Officer. Over and above the same, it also awarded solatium at the rate of 30% p a on the total amount awarded together with additional amount at the rate of 12% p a on the market value of lands from the date of publication of award and interest at the rate of 9% p a on the additional amount from the date of possession of the land till the date of payment, if the amount was deposited within one year of the award and if not, then interest at the rate of 15% p a from the date of expiry of one year.

3. The State Government having been aggrieved by the said award, has preferred these appeals on two grounds, firstly on the question of limitation and secondly on merits of the award. I have heard Ms. Hansa Punani, Ld. AGP for the appellant and Mr. DF Amin, Ld. Advocate for the respondents in both the appeals. It is submitted by Ms. Punani that the finding on the issue of limitation given by the Reference Court is erroneous. She has also submitted that considering the evidence on record, the rate of compensation determined by the Ld. Judge is much on a higher side. In other words, she has tried to justify the award made by the Special Land Acquisition Officer . As against that, Mr. DF Amin, Ld. Advocate for the respondents has supported the judgment by submitting that the appellant has not produced any material which could substantiate both the grounds raised by it in appeals. As against that, it is submitted that there is adequate material to show that the findings given by the Ld. Judge on the question of limitation as well as on merits are just and proper.

4. I have perused the record of these appeals. I have also given careful consideration to the rival submissions. It is an admitted fact that the lands of the respondents have been acquired for the purpose of Panam Irrigation Project and at the end of the proceedings of acquisition, award was made by the Special Land Acquisition Officer on 31/3/1977. He has awarded lumpsum

amount. He has awarded Rs.900/- per hectare for lower quality of Jirayat land, Rs.1400/- per hectare for medium class Jirayat land, Rs.2200/- per hectare for good quality Jirayat land, Rs.2200/- for Kyari land and Rs.100/- for waste land. The judgment shows that the certified copy of the award of the Special Land Acquisition Officer was applied for by the respondents on 25/1/1985 and it was ready for delivery on 4/2/1985. Upon receiving the certified copy, the reference application under section 18 of the Act to the Collector was made within stipulated time and to that there is no dispute. However, the submission of the Ld. AGP is that when the award was made on 31/3/1977 and the reference cases were filed sometime in February 1985 obviously they are time barred. Same contention was raised before the District Court also and it has been adequately dealt with by him in para. 12 of his judgment. It is the say of the respondents that they were never intimated about the declaration of the award since no notice under section 12 (2) of the Act was served on them nor the copy of the award or gist of it was made available to them in any other manner. It appears from the record that on this count, some of the owners of the land under acquisition had approached this Court with a grievance that copy of the award was not made available to them nor any intimation was given to them and for a direction on the Government to supply them copy of the award. Their grievance came to be redressed by this Court and the Government was directed to supply copy of the award. Thereafter, application for obtaining certified copy of the award was made and they was made available to the respondents. In view of the same, the Ld. Judge has come to the conclusion that the references were within the period of limitation particularly when the State had failed to produce any material on record to show that notices under section 12 (2) of the Act was served nor any other material to establish that either the copy of the award was made available to the respondents or gist of it was supplied to them in any other manner. The Ld. GAP is also not in a position to satisfy me on this aspect. Hence, there is no basis on which the said contention of the Government can be accepted and the findings given on this

issue by the Reference Court can be set aside by this Court.

4.1. So far as the merits of the case are concerned, as stated above, the claimants have entered the witness box and have produced evidence with regard to quality of their lands. It is also on record that award passed in the proceedings in respect of the adjoining land was produced by the claimants at Exh. 21. By the said award, it appears that claimants of the said land were awarded Rs.3,000/- per acre as regards Jirayat land and Rs.4,500/- per acre as regards Kyari land. In the evidence it is stated by witness Lunjabhai Gemabhai Exh. 23 and Somabhai Nathabhai Exh. 24 that they had irrigation facility and they generate income from the cultivation. It is also stated that there were residential houses standing on the land and also well. It is denied by them in their evidence that the award on which they placed reliance was in respect of the land belonging to one Thakor Yadvendrasinhji, which was land of superiod quality. They have stated that the category of land was the same. The appellant has not produced any material to substantiate the suggestion and the suggestion has merely remained a suggestion only and nothing beyond that. In view of the same, on merits also it appears that the award made by the Reference Court is just and proper and there is no need to interfere with the same. In view of the above, it clearly appears that these appeals have no merits and they are dismissed with no order as to costs.

R & P to be retransmitted to the trial Court forthwith.

[Akshay H Mehta, J.]

* Pansala.